

ESTTA Tracking number: **ESTTA398183**

Filing date: **03/15/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Motenergy, Inc.		
Entity	Corporation	Citizenship	Wisconsin
Address	3580 Slinger Road Slinger, WI 53806 UNITED STATES		

Correspondence information	Jill Gilbert Welytok Absolute Technology Law Group, LLC 3316 West Wisconsin Avenue Milwaukee, WI 53208 UNITED STATES jwelytok@abtechlaw.com Phone:414-223-1670
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Applicant Information

Application No	77946794	Publication date	03/08/2011
Opposition Filing Date	03/15/2011	Opposition Period Ends	04/07/2011
Applicant	Fishman, Randall 118 Pine Street Apt. 3 Cliffside Park, NJ 07010 UNITED STATES		

Goods/Services Affected by Opposition


Class 007. All goods and services in the class are opposed, namely: General purpose electric motors for industrial machines in the field of factory equipment
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85258508	Application Date	03/04/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ETEK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2007/12/20 First Use In Commerce: 2007/12/20 Electric motors for vehicles

U.S. Application No.	85258518	Application Date	03/04/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ETEK-R		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2007/12/20 First Use In Commerce: 2007/12/20 Electric motors for vehicles		

Attachments	85258508#TMSN.jpeg (1 page)(bytes) 85258518#TMSN.jpeg (1 page)(bytes) ETEK_NoticeOfOpp_FILED_031511.pdf (4 pages)(85952 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jill Gilbert Welytok/
Name	Jill Gilbert Welytok
Date	03/15/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

77946794

In re Application No. 77946794 for the mark ETEK filed February 28, 2010.

Motenergy, Inc.)	
)	
Opposer)	
)	Opp. No. _____
v.)	
)	
Randall Fishman)	
)	
Applicant)	

NOTICE OF OPPOSITION

Motenergy, Inc. ("Opposer"), a corporation, having a place of business at 3580 Slinger Road, Slinger, WI 53086 believes that it will be damaged by the registration of the mark shown in Application Serial No. 77946794 and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title, and interest in and to the marks ETEK and ETEK-R, which have been used continuously since at least as early as December 20, 2007, in connection with electric motors for vehicles.

2. Opposer has filed two application with United States Patent and Trademark Office, Opposer Serial No. 85258508 for the mark ETEK and Opposer Serial No. 85258518 for the mark ETEK-R, filed on March 4, 2011 (together, the "ETEK Marks").

3. Since prior to the filing date of Applicant's application and prior to any use by Applicant, Opposer's ETEK Marks have been extensively used, advertised, and promoted in connection with electric motors for vehicles.

4. As a result of said extensive use, advertising, and promotion, Opposer's ETEK Marks have become well-known and famous as distinctive indicators of the origin of Opposer's goods and services, and the marks have become valuable symbols of Opposer's goodwill.

Likelihood of Confusion-§2(d)

5. The mark which Applicant seeks to register is identical to or so closely resembles Opposer's ETEK Marks that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's services and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's marks as the manufacturer and source of such goods.

6. The products of the Applicant are so closely related to the products of Opposer that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer, and this will cause Opposer irreparable damage

Deception/False Suggestion of Connection- 2§(a)

7. Applicant's alleged mark so closely resembles Opposer's ETEK Marks that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that Applicant's alleged mark misdescribes the nature or origin of the goods and services, purchasers are likely to believe that the misdescription actually describes the nature or origin of the services, and this is likely to materially alter purchasers' decisions to acquire Applicant's goods.

8. Applicant's alleged mark so closely resembles Opposer's ETEK Marks that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged mark points uniquely to Opposer, and purchasers will assume that products and services offered under Applicant's alleged mark are connected with Opposer.

9. Applicant's alleged mark is deceptive in that it falsely suggests that Opposer is the source and/or manufacturer of goods actually manufactured and sold in commerce by Applicant.

Dilution-§43(c)

10. Opposer's ETEK Marks have been widely used and extensively advertised in the United States and, therefore, the marks have become well known and distinctive of Opposer's goodwill.

11. Opposer's ETEK Marks became well known before Applicant applied for or made any use of its alleged mark.

12. Applicant's alleged mark will cause dilution of the distinctive quality of Opposer's marks.

13. Use or registration of Applicant's alleged mark will lessen the capacity of Opposer's marks to identify and distinguish Opposer's services.

14. Likelihood of confusion, dilution, and deception is enhanced by the fact that the Parties' goods and service are sold through the same trade channels to the same classes of prospective purchasers.

15. Use and registration of the mark ETEK by Applicant will deprive Opposer of the ability to protect its reputation, persona, and goodwill.

16. Use and registration of ETEK by Applicant will tarnish the goodwill symbolized by Opposer's marks.

17. Likelihood of tarnishment and damage to Opposer's goodwill is enhanced by the fact that prospective customers who encounter defects in the quality of Applicant's products and services will attribute those defects to Opposer, and this will tarnish Opposer's reputation and goodwill.

23. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's alleged mark, and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

Dated: March 15, 2011

MOTENERGY, INC.

By: 

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Attorney for Opposer
Motenergy, Inc.